



## CITY OF SAN JOSE, CALIFORNIA

DEPARTMENT OF HOUSING  
200 E. SANTA CLARA STREET, 12<sup>TH</sup> FLOOR  
SAN JOSE, CALIFORNIA 95113  
TELEPHONE (408) 535,3080  
FAX (408) 598,3183

### TERM SHEET—CONSTRUCTION/PERMANENT LOAN FORD AND MONTEREY SPECIAL NEEDS APARTMENTS

Date: June 29, 2011

1. **PROJECT DESCRIPTION:**

Name and Location: Ford and Monterey Special Needs Apartments or Ford and Monterey Phase I ("Phase I"); located on the north side of Ford Road approximately 550 feet east of Monterey Road, San José.

20 units to include 19 units of rental housing for individuals with special needs and one manager's unit. 16 one-bedroom units and 4 two-bedroom units; 19 units will be restricted at or below 50% of Area Median Income ("AMI") but 18 units are expected to be operated at or below 30% of AMI and one unit operated at or below 50% of AMI with one unrestricted manager's unit. 18 of the special needs units will be subsidized under a PRAC (Project Rental Assistance Contract) operating subsidy provided by HUD.

2. **BORROWER:** Ford Road Supportive Housing Inc., a California nonprofit public benefit corporation.

3. **DEVELOPER:** Eden Housing Inc., a California nonprofit public benefit corporation.

4. **PURPOSE OF LOAN ("Loan"):** Funding construction and permanent development costs.

5. **LOAN AMOUNT:** Up to \$3,000,000 NSP loan (Neighborhood Stabilization Program—HUD funds); up to \$500,000 loan from 20% tax-increment funds; up to \$190,000 conditional loan from 20% tax-increment funds provided as a back-stop loan in the event that a FHLB AHP award is not obtained in time to meet HUD's financing deadlines.

6. **TERM OF LOAN:** Construction Period: up to 18 months with one 6-month extension option at the option of the City; Permanent Period: 55 years

7. **INTEREST RATE:** Construction and Permanent Period: 0.0% simple interest.

8. **RESIDUAL RECEIPTS PAYMENTS:** 50% of surplus cash flow from residual receipts during permanent loan period to be applied against principal of the loan.

9. **ACCELERATION:** City shall have the right to accelerate repayment of the Loan in the event of a default under any Loan Document or upon sale, transfer or alienation of the Property.

10. **SECURITY:** Second mortgage leasehold lien. The Loan shall be evidenced by a Loan Agreement and Promissory Note. The Leasehold and Assignment of Rents and Security Agreement may be subordinated to a construction and permanent loan acceptable to the City. The affordability restrictions shall not be subordinated, except to HUD if they require subordination.

11. **OTHER REQUIREMENTS:** Borrower shall procure and deliver to City evidence satisfactory to City that Borrower has obtained all of the necessary construction and permanent financing. Construction and permanent financing shall include a HUD capital grant. Borrower will use its best efforts to obtain a Federal Home Loan Bank Affordable Housing Program ("AHP") loan including making application in each future round of AHP applications until an award is received, or until construction is complete when application is no longer permitted. Subsequent receipt of the

AUP shall be applied first to pay project costs, shortfalls in the senior permanent loan or final equity amounts and second to reduce Loan principal.

12. **PROJECT PRO FORMA:** Prior to the close of the Loan, Borrower shall submit to the City and the City will approve an updated pro forma budget reflecting Borrower's projections of the construction/permanent budget, sources and uses of funds and income and operating expense cash flow for the Project.
13. **AFFORDABILITY RESTRICTIONS:** Restricted use as described in Section 1 until 75 years from the date of recording of the Notice of Completion consistent with ground lease. Affordability Restrictions to be unsubordinated, except to HUD if they require subordination.
14. **APPRAISAL:** An updated appraisal report prepared for HUD and naming the City as an interested party will have been received and reviewed by the City. In the event that HUD does not require an updated appraisal then the City, at its sole discretion, may engage an appraisal acceptable to the City.
15. **SURVEYS:** Borrower shall submit to the City for approval a survey, certified by a licensed surveyor, showing the location of all matters affecting the property including the location of boundary lines, easements, rights of way, and setting forth the legal description of the Property.
16. **TOXIC REPORTS:** Borrower has submitted Phase I and Phase II reports prepared by licensed or registered environmental engineers. Environmental reports are required to be acceptable to the City at its sole discretion. Dust mitigation work during construction is required that must be completed to the satisfaction of the City by a qualified, licensed technical expert thoroughly familiar with the requirements of local, State and federal regulations and laws. The City will require its review and signoff on the dust mitigation plan before closing of the Construction Loan, unless the plan has already been approved by the Bay Area Air Quality District and Developer can provide written evidence of this approval.
17. **RELOCATION PLAN:** Borrower has submitted a letter that affirmatively states the facts, reasons and evidence why a Relocation Plan is not necessary, acceptable to the City.
18. **PLANS AND SPECIFICATIONS:** Final plans and specifications for the Improvements shall be subject to City's approval prior to close of the City's contemplated Construction Loan. City's review and approval may include without limitation architectural plans and details, exterior elevations, interior finish schedule, structural plans and details, plumbing plans, HVAC plans, electrical plans, contractor's cost breakdown, grading plans, drainage, sewer, water, street, electrical and gas plans, plot plans, offsite, and landscaping plans. There shall be no change in the plans and specifications that have been approved by the City nor any material deviation in construction of the Improvements without the City's prior written consent.
19. **ARCHITECTURAL AGREEMENT:** The architectural agreement ("Agreement") for the preparation of the plans and specifications shall be subject to City's review and approval.
20. **PREVAILING WAGE REQUIREMENTS:** Prevailing wage procedures and policies apply to this project. Prior to and during construction, City shall require Borrower to obtain clearance from the Office of Equality Assurance, which enforces procedures and policies ensuring prevailing wages are paid, and to coordinate with its Contract Compliance Specialist, Teresa La Vrar at (408) 535-8430, ensuring prevailing wages are paid on this project. Borrower will request to the Housing Department that wage rates be issued no less than 120 days prior to the date needed.
21. **MANAGEMENT AGREEMENT:** The management agreement providing for the management or operation of the Property or Improvements by a third party shall be subject to City's approval prior to execution.
22. **REPLACEMENT RESERVES:** The City shall require Borrower to deposit into an interest-bearing account after closing the HUD funding a payment beginning at the first month after closing and each successive month thereafter, to be held in a bank approved by the City and HUD ("Replacement Reserve"). The initial amount and monthly payment amount shall be determined by the City and HUD. This Replacement Reserve must be maintained until the Loan is paid in full. Funds held in the Replacement Reserve Account may be applied to cover the costs of replacing major structural elements or equipment of the Property or for any other purpose consistent with maintaining the financial and

physical integrity of the Property. Any withdrawal from the Replacement Reserve Account for costs incurred by Borrower for items described in this paragraph is subject to City's and HUD's prior approval.

23. **COST BREAKDOWN OR BUDGET:** Borrower shall deliver to City for City's approval prior to close of the Construction Loan a) a detailed breakdown ("cost breakdown" or "budget") of the cost of constructing, financing and other costs of developing the Improvements and the Property, and a list of all contractors, subcontractors and the material suppliers to be employed in connection with the construction of the Improvements (setting forth the nature of the work to be performed, the labor and materials to be supplied and the dollar amount of such work or materials). If required by City, Borrower shall also submit copies of all bids received for each item of work to be performed as well as copies of executed subcontracts with acceptable bidders b) a construction, conversion and permanent period sources and uses of funds and c) a pro forma income, expense and cash flow over the term of the loan that includes repayment of the City loan. The cost breakdown, sources and uses and cash flow schedule are attached to the Loan Agreement as an exhibit.

All contracts, subcontracts, contractors and subcontractors shall be subject to City's approval prior to their execution or selection and, as applicable, prior to close of the Loan.

City shall make disbursements of the Loan based on a cost breakdown which may restrict disbursements to line items in cost categories. City shall require that Borrower provide documentation supporting all requests for disbursement of Loan funds including lien waivers. City reserves the right to conduct inspections of the Property prior to disbursing Loan funds.

24. **CONSTRUCTION CONTRACT:** The construction contract ("Contract"), and any change orders issued hereunder, and the contractor ("Contractor") to be retained by Borrower to construct the Improvements shall all be subject to City's approval. City shall require an assignment of Borrower's interest in and to the Contract as security for the Loan. The construction contract used should be Cost Plus Fee with a Guaranteed Maximum Price contract. Contract must be in the most recent form provided by the American Institute of Architects ("AIA"). Under the Cost Plus a Fee with a Guaranteed Maximum Price contract, the savings clause in the contract must indicate that 100% of the cost savings will be returned to the Borrower. The City shall have received financial statements and resume from the general contractor acceptable to the City. Payments for material stored off-site are prohibited, unless if approved by the City at its sole discretion. Payments for material stored on-site is prohibited unless a request is received 30 days in advance and is approved as an exception in writing by the City.
25. **CONSTRUCTION COMPLETION BOND:** A completion bond for the amount of the construction contract naming the City as co-obligee, letters of credit, or other form of assurance of completion in form and substance acceptable to the City will be required for the general contractor.
26. **DISBURSEMENT:** City shall make disbursement of the Loan based on a cost breakdown that restricts disbursements to cost categories. City shall require that Borrower provide documentation supporting the request for each disbursement of the Loan funds including an undisbursed loan proceeds report, created by either the senior lender or by the Developer with each draw request. City reserves the right to conduct inspections of the Property prior to disbursing Loan funds. The City's written approval is required for all construction disbursements, no matter the source of funds.
27. **LOAN IN BALANCE:** Borrower shall be required to maintain the Loan "in balance". The Loan is in balance whenever the amount of the undisbursed loan funds, plus any sums to be provided by the Borrower are sufficient, in the judgment of City, to pay, through the completion of the construction and conversion to the permanent loan all of the following sums: (i) all monies owing or owed third party consultants, suppliers, or contractors; and (ii) all interest and other sums or costs which may accrue under the Loan Documents.

The Loan is "out of balance" if City in its sole judgment determines that there are insufficient funds to pay all such costs and sums.

City reserves the right to receive, review and approve any and all project expenditures made prior to and after closing of the Loan.

28. **ADDITIONAL BORROWER'S FUNDS:** Whenever the Loan becomes out of balance, City may require the immediate deposit by Borrower into an account (the "Borrower's Funds Account"). If requested, Borrower shall deposit additional funds into the Borrower's Funds Account necessary to cause the Loan to be in balance. Borrower's failure to deposit the funds so demanded by City shall constitute a default under the Loan.
29. **HAZARD INSURANCE:** Borrower shall procure and maintain fire and extended coverage insurance (or, in lieu thereof, Builders Risk completed value insurance, as City may require) in a form, substance and amount (at least equal to full replacement value) approved by City, and issued by a California admitted carrier. Borrower shall also procure and maintain insurance against specific hazards affecting City's security for the Loan as may be required by City, or any other lender. All such policies shall contain a standard mortgagee loss payable clause in favor of City and shall be approved by the City's Risk Management Department (attention: Connie Aparicio at 408-535-7061).
30. **PUBLIC LIABILITY AND OTHER INSURANCE:** Borrower shall procure and maintain public liability and property damage insurance, and other insurance as required by the City (with the City and the Agency named as additional insured) in a form, substance and amount approved by the City, and issued by a California admitted carrier (A.M. Best rated B+ or better). Borrower shall also procure and maintain workers' compensation and all other insurance required under applicable law, which insurance shall be in a form and amount approved by the City's Risk Management Department (attention: Connie Aparicio at 408-535-7061).
31. **HAZARDOUS MATERIALS:** Borrower shall represent and warrant, and provide evidence satisfactory to City, that hazardous materials have not been, are not being, and will not be stored or used on the Property or improvements, and that the Property and improvements are in compliance with all environmental laws, ordinances and regulations. Borrower shall be solely responsible for any loss, cost, expense or liability in connection with hazardous materials.
32. **TITLE INSURANCE:** Borrower shall procure and deliver to City an update to the City's 2006 ALTA Extended Policy of Title Insurance, together with such endorsements as City may require, in an amount equal to the sum of principal amounts of the City's Construction Loan, insuring that City's Deed of Trust constitutes a second lien or charge upon the Property subject only to such items as shall have been approved by City. There shall be no exceptions permitted for mechanics liens. Such policy shall be issued by a title insurer approved by City.
33. **ORGANIZATIONAL AGREEMENTS:** Borrower shall submit to City a certified copy of Borrower's Articles of Organization, By-Laws, Borrowing Resolution and Incumbency Certificate with all exhibits and amendments thereto and related filings or recorded documents, a current good status certificate and such related documentation as City may request. City may require an opinion from Borrower's independent counsel that Borrower is validly organized under California law and is empowered to enter into the transactions contemplated by this Term Sheet.
34. **FINANCIAL INFORMATION:** Borrower shall deliver prior to loan closing and during the term of the Construction Loan within 120 days of the end of each fiscal year, Eden Housing, Inc., audited income and expense statement, a balance sheet, and a statement of all changes in financial position signed by authorized officers of Eden Housing Inc.; during the term of the permanent loan within 120 days of the end of each fiscal year, for the Borrower and Eden Housing, Inc., audited income and expense statement, a balance sheet, and a statement of all changes in financial position signed by authorized officers of Borrower and Eden Housing Inc., respectively. Prior to close of the Construction/Permanent Loan, and during the term thereof, Borrower shall deliver to City such additional financial information as may be requested by City. City reserves the right to review and approve financial statements and other credit information and references prior to closing, in order to allow City to properly underwrite the Loan.
35. **COMPLETION GUARANTEE:** A guaranty of completion of construction of the Project in form and substance acceptable to the City shall be required from Eden Housing, Inc.
36. **CITY'S EXPENSES:** Borrower shall make prompt payment of all expenses of City and other parties incidental to the Loan including, without limitation, expenses incurred for third-party expenses, architectural and engineering review, appraisal or appraisal review, toxic review, inspections and legal services. Borrower shall also pay all pre-closing and closing expenses including, without limitation, escrow fees, title insurance, liability and other insurance and architect's and engineer's fees, as well as charges for such items as surveys, recordation, filing and documentary or stamp taxes. If this Loan does not close, Borrower shall pay City's reasonable expenses incurred with respect to this transaction.

37. **CONSTRUCTION INSPECTION CONSULTANT:** The City will engage Roy Buis for the purposes of reviewing construction documents, monitoring construction draws and reporting on construction progress. Roy's total compensation for these services is expected to be \$19,000 but may be higher depending upon the construction schedule and complexity of the project. Roy's compensation will be paid in full at Loan closing from the City's loan proceeds or other sources as identified by Borrower.
38. **PROJECT COST SAVINGS:** Project cost savings shall be calculated at conversion by a third-party development cost audit. Distribution of project cost savings shall first be applied to shortfalls in senior permanent loan or final equity amounts, and second to the City, to be applied to principal of the Loan. Distribution of project cost savings shall be approved by HUD and be in accordance with the cost savings rider on the General Contractors contract. HUD requirements shall supersede City requirements.
39. **DEVELOPER FEE:** Developer fee to be acceptable to the City. The amount assumed now for Phase 1 of \$550,000 to be reviewed and approved at the sole discretion of the City.
40. **REFINANCING:** Borrower shall notify City no less than 120 days in anticipation of refinancing the Senior permanent loan. Such refinancing shall be subject to City's approval, and its selection must be based on the objective of maximizing loan refinancing proceeds. All refinancing proceeds in excess of a City-approved scope of rehabilitation work shall be applied first to interest and then to principal of the subject Loan.
41. **DOCUMENTATION:** This letter is not intended to set forth all of the terms, conditions and documents for the Construction Loan and Permanent Loan, which shall include customary provisions and documents for a transaction of this type. The form and substance of all documents to be delivered to or approved by City (including, but not limited to, all such documents mentioned in this Term Sheet and all documents evidencing, securing or related to the Loan) shall in all respects be satisfactory to City. Borrower shall promptly deliver to City any further documentation which may be required by City.
42. **CHANGES OR AMENDMENTS:** No documents or contracts which are to be delivered to City or are subject to City's review or approval shall be modified or terminated without the prior written approval of City.
43. **CONFLICT:** If a conflict arises between terms herein and terms in the Loan Agreement, Note, Affordability Restrictions, and other documents effectuating this Loan, the loan documents shall prevail.
44. **EXPIRATION:** The signatures below indicating offer and acceptance constitute a commitment by the City to fund this loan, given agreement on final loan terms. If not executed within 5 business days, the terms detailed herein will expire and must be renegotiated. The City's construction/permanent commitment expires on \_\_\_\_\_ 2011 if loan documents have not been executed.

ACCEPTED BY:

Ford Road Supportive Housing Inc., a California  
nonprofit public benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

LINDA MANDOLINI

Executive Director

6/29/11

ACKNOWLEDGED BY: